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Eminent Domain and Condemnation

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eminent domain and condemnation
THE TAKING OF PRIVATE PROPERTY FOR PUBLIC USE IN INDIANA

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Foreword

Many people become emotional and troubled when they face a condemning agency because of the intrusion that it presents and fear of economic loss. Property owners often object to the policy basis of eminent domain in general and the condemning agency's use of eminent domain in particular. We do not intend for this publication to be the basis for a policy discussion.

The following discussion is intended for the lay reader. Its purpose is that of giving a broad overview of what is involved in a property taking under eminent domain and a condemnation proceeding. Appraisers and lawyers have specialized literature and training for condemnation proceedings.

We do not intend this discussion to be a do-it-yourself guide for confronting a condemning agency. Property owners and condemning agencies typically seek the help of attorneys, appraisers, and perhaps others where there is a property taking under eminent domain. Our discussion is intended to give the property owner involved in a taking under the power of eminent domain some appreciation of: the basic rights which can be exercised and, in a general way, how to go about exercising these rights.

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THE TAKING OF PRIVATE PROPERTY FOR PUBLIC USE IN INDIANA

by Gerald A. Harrison, Gary L. Watson and Paul D. Spillers

Most property owners consider it a compliment when a neighbor says: "I sure would like to have this piece of land: Would you consider an offer? ... Let me know when you are interested in selling." The property owner will be interested in selling only if it suits his overall investment strategy.

Much different is the situation when a stranger with an offer informs you that he represents a governmental agency or company which has the authority to take or use your property. This situation is often viewed as an imposition upon the basic rights of the property holder. Is this really "an offer which cannot be refused?" Must you yield to the demand that you allow your property to be taken when it is supposedly for some cause that benefits the public? The process is referred to as "a taking under the power of eminent domain." What rights do property owners have with respect to the power of eminent domain?

Both the United States and the Indiana constitutions restrict the right to take private property by saying it can be taken only for public use and that the property owner must receive "just compensation." The law says just compensation depends upon the extent of the damages to the property involved in the taking. Damages, through the eyes of the property owner, often exceed damages as determined by the taking agency or party.

While the need for highways, parks, gas lines, power lines and reservoirs cannot be denied, at least in the view of the public, the rights of the property owner should and can be protected. This can be done if the property owner takes timely action, and is willing to be persistent in pursuing his rights.

Eminent Domain

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The need to take property for the use of the public is part of our legal heritage. Eminent domain is the right of government bodies, agencies, utilities and other organizations, acting in the public interest, to take private property. This right is an inherent attribute of sovereignty which rests with the states, and has been reaffirmed by the Indiana legislature in the form of State laws.

Both the United States and the Indiana constitutions restrict the right to take private property by saying it can be taken only for public use and that the property owner must receive "just compensation." The law says just compensation depends upon the extent of the damages to the property involved in the taking. Damages, through the eyes of the property owner, often exceed damages as determined by the taking agency or party.

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The taking agency which presumes to have the benefit of eminent domain will make a determination of need for rights in a given property, survey and appraise the property rights to be taken and arrive at an offer. It is generally wise for owners to cooperate in these early states, especially with appraisers or surveyors. Property owner should draw to the appraiser's attention the many good points of his property. This appraisal will serve as the basis for an offer. Preliminary investigations on the property may lead to a satisfactory offer and settlement. Thus, additional inconvenience and costs can be avoided.

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 Upon completion of the appraisal the agency makes the landowner an offer to purchase the property. The property owner should ask for a copy of the appraisal which serves as the basis for the offer. A condemning agency need not furnish their appraisal, but if they do, the property owner or their counsel may be able to point out deficiencies that would facilitate a settlement. An independently obtained professional appraisal may benefit the property owner at this point. The property owner may accept or reject the offer. Nevertheless, he should contact an attorney for consultation and advice regarding his rights and legal alternatives available. As a practical matter, the attorney will, if desired, coordinate the acquisition of professional appraisals and expert opinions. Even if the owner decides to accept the offer, counsel with an attorney is advisable to insure that all legal documents are in the best interest of the owner.

If the property owner and the taking agency cannot agree on a price, the agency may then initiate a condemnation suit. “Condemnation” is a court procedure followed to acquire from the property owner the sought-after property rights. This procedure which provides for court appointed appraisers is also used to ascertain the just compensation for the property owner. Compensation (damages) includes: (1) value of property rights taken and (2) value of any damages to property that remains.

**Court Procedure**

The usual procedure in Indiana courts is as follows:

1) The condemning or taking agency (condemnors) files a complaint in either the circuit or superior court of the county where the property is located. A complaint will:
   a) Name the property owner(s) mortgagees lienholders and others claiming an interest in the property, e.g. a husband and wife who hold property jointly or the landlord and tenant with an interest in the property (condemnees).
   b) Explain the need and the public purpose for which the property is being sought.
   c) Give a specific description of the property to be taken.
   d) State that an offer has been made but was refused by the property owner(s).
2) The clerk of the court sends a copy of the complaint, along with a summons to appear, to all defendants (property owners). A specified number of days will be allowed before a hearing is set.

3) The property owner through his legal counsel has several steps available at this point:
   a) He may challenge the right to take his property.\(^2\)
   b) He may challenge the need to take his land specifically or the quantity desired.
   c) He may challenge the adequacy of the complaint on procedural and technical issues.
   d) He may show that the complaint (condemning agency) did not try to reach an agreement on just compensation and thus there was an inadequate basis for beginning the condemnation proceedings.
   e) He may file a cross complaint for damages to land not taken which suggests that the condemning agency and the property owner have not been able to agree.

4) A hearing is held at which the judge determines whether the condemning agency is within its power. If the ruling is “yes,” then an “order of appropriation” is issued.

5) The judge then appoints three other property owners in the county in which the property is located to appraise the property rights being taken including damages to remaining property and report back to him.

6) The condemning agency must deposit with the court the value in money as ascertained by the court appointed appraisers. After the deposit with the court, the agency may take possession of or enter upon the property and start work on the project.

7) To bring about a trial the property owner or condemning agency must file “exceptions” within 20 days of the payment into court. “Exceptions” are any objections the property owner or condemning agency may have concerning the ordered appraisal. If no exceptions are filed, there is a waiver of the right to trial. If exceptions are filed, the condemning agency and the landowner may attempt a negotiated settlement.

8) If the parties cannot agree, the court sets a trial date. The property owner may get more or less than what has been previously offered as a result of a trial. A year’s delay may result before the trial.

9) Either the property owner or the condemning agency may request a jury trial. The property owner carries the burden of showing that the offer by the agency or the appraised valuation by the court appointed appraisers is too low. An amount decided by the court as a result of the trial process (the “judgment”) may be more or less than what was offered or paid into the court.

\(^2\) A property owner may appropriately question the authority of the particular corporation or agency to exercise the power of eminent domain. Recourse for such a challenge is primarily through courts and the condemnation proceedings in particular. However, Indiana statutes provides liberal access to the power of eminent domain where the public is served by a proposed project. For example, an Indiana statute states that private corporations that furnish, supply, transmit, transport or distribute electrical energy, gas, oil, petroleum, water ... to the public shall have the right of eminent domain. (I.C. 32-11-3-1).
10) Either party may appeal to a higher court if the judgment is not satisfactory to them. Such an appeal might be based on alleged errors of the court or an alleged inadequate compensation.

Statistics show that in about 80 per cent of the cases that go to trial, the award for damages (compensation) is greater than that offered by the condemning agency prior to a court proceeding. However, the property owner must pay for his legal counsel and other costs such as professional appraisal fees necessary in presenting his case.

A property owner may apply some simple budgeting or break even analysis techniques to determine if the trial proceedings are likely to pay a dividend. For example, if it is estimated that expected testimony and other costs would amount to $3,000 and the legal counsel is acquired for one-third of any additional award from a court judgment above the “before suit” offer, then the increase won by the trial proceedings must exceed $4,500 for anything additional to accrue for the property owner’s efforts.3

Algebraically this result is obtained by solving an equation for “Break Even Gain in Award” (G), i.e., 

\[ G = \frac{3,000 \text{ (trial costs)}}{2/3G} + \frac{1}{2} \text{ (attorney fees)} \]

Then 

\[ G = \frac{3,000}{2/3} \text{ and } G = \frac{4,500}{2/3} \]

The more the property owner (or his counsel) expects the gain in award to exceed the break even amount the greater the inclination to enter into a condemnation suit. The cost estimates involved in preparing for and participating in a condemnation suit may be obtained from the property owner’s attorney.

The condemning agency pays the court costs of the condemnation proceeding. If the condemning agency gives up the proceedings, or does not pay the owner within the time specified in the judgment, then the agency will have to pay the property owner’s costs, and attorney’s fees.

Rights of the Property Owner

In response to the exercise of the power of eminent domain, the property owner cannot fully assess his rights nor estimate what just compensation should be until they know exactly what is being requested. This problem can be analyzed using the bundle of rights concept of property ownership. Each of the elements in the bundle entails a property right. Primary in this bundle are the landlord’s rights, tenant’s rights, mineral rights, right-of-ways and mortgages and creditors’ rights. How does the taking requested interfere with these rights? Does the property owner currently hold all of these rights? For example, are the possession and use rights shared with a tenant?

Once the rights being requested by the taking agency are identified, the property owner can seek an estimate of the damages. If the offer by the taking agency is not believed to be sufficient, the owner can force a law suit, an action in court, where a trial by jury can be obtained.

The property owners can challenge the existence of a public cause as well as the need for the taking of his property in particular. Seldom will these challenges be successful. Therefore, the condemned property owners’ greatest hope in forcing a court action is to favorably influence the “just compensation” allowed for their property.

Just Compensation

Just compensation when simplified consists of two elements—the value of property rights completely taken and damages to remaining property rights. These two elements are referred to as “damages”.

Injuries which quality for compensation must be such as to specifically affect the value of the total property because of property interest taken. This is to distinguish from developments or factors which influence property not taken or that affects an entire community, such as a change in zoning laws.

Not only may there be compensation for basic rights in real estate, but also for loss of improvements such as buildings, fences, crops and woodlands. However, past court cases have shown many items to be not compensable, such as:

1) fear of danger from a power line
2) “mere conjecture, fancy or imagination”
3) “remote” possibilities
4) future loss of profits
5) loss of aesthetic or sentimental value

To leave the owner of the property taken as well off after as before the taking, it may be necessary to pay for resulting damages to property not taken.

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3Landowners who employ legal counsel for a condemnation proceeding are advised not to pay the percentage of the additional award, in full, prematurely, such as at the deposit or withdrawal of the court appraisers’ award.

4See the section “Property Taken Under Federally Financed Programs” for rights and policies applicable for Federal or federally financed programs.

5In more detail damages (D) could be expressed as the summation of five components:

\[ D = \text{FMVP} + \text{FMVI} + \text{Dec. FMVR} + \text{Other} - \text{Inc. FMVR} \]

where:

\[ \text{FMVP} = \text{fair market value of the condemned property} \]

\[ \text{FMVI} = \text{fair market value of all improvements on the condemned property} \]

\[ \text{Dec. FMVR} = \text{decrease in the fair market value of the remaining property of the owners (severance damages).} \]

\[ \text{Other} = \text{other damages resulting from methods of construction (consequential damages).} \]

\[ \text{Inc. FMVR} = \text{increase in the fair market value of the remaining property as a result of the improvement where condemnation is by the highway department or by a municipality} \]

NOTE: The Indiana law does not allow Inc. FMVR to offset FMVP or FMVI so that D will be at least FMVP + FMVI.

Dec. FMVR and Other may be referred to as “severance” damages.
Some prime examples are damages for:
1) land between utility poles or towers
2) weeds and insects that may be prevalent at the base of towers
3) necessary cost of moving buildings

It also is true that if the project requiring the property being taken improves the value of the remaining land, this is to be taken into consideration to offset certain damages, where the condemning agency is a highway department or municipality.

How are the value of damages which constitute "just compensation" ascertained? The guidelines set by law are that "just compensation" means the full and perfect equivalent in money of the property taken. The standard test is the fair market value which, in short, is the price at which the property would change hands between a willing buyer and a willing seller in a freely competitive situation.

Appraising of property taken under eminent domain authority is often very difficult. This is especially true when only part of the property owner’s rights in a particular piece of property are being taken. In cases such as power or gas lines, right-of-way is taken. In the case of a roadway, all of the ownership rights in a strip of land are usually taken. Appraisal of damages in such cases is much more difficult than appraising an entire farm or acreage. These circumstances suggest the need for a qualified appraiser.

The guidelines for estimating damages is the difference in the value of the whole property before and after the taking. That is "all things" considered, what is the fair market value of the taking before versus after the road or power line goes through, or several acres are taken for a power line?

If a property taking results in a condemnation suit in Indiana, the guidelines for estimating just compensation used by the court appointed appraiser will be fair market value of:
1) the property rights taken including improvements
2) damage to remaining property (severance damages) including those resulting from methods of construction to be utilized (consequential damages)
3) appraised value of benefits resulting from the condemning agency’s project that add to the property owners remaining property rights may be subtracted from the total damages estimated in (2) where the condemning agency is a highway department or a municipality. For example, a taking for an interstate highway may leave the property owner with valuable locations for service stations.

Many factors are taken into consideration to determine fair market value for a given acreage:
1) rental values
2) buildings and standing timber
3) crop yields
4) highest and best use for property

The values placed on the above items in a trial depends upon what facts are presented and how the court or jury interprets the facts. In court, these facts will be introduced by testimony of the property owner, professional appraisers, court appointed appraisers and other experts. A key factor in deciding whether property owners should go to trial is the evidence available to support their appraised value. It is reasonable to expect that the offer is less than what a court judgment will bring based upon the evidence.

Who Shares in the Compensation?

Every person with a legal property interest has a right to be compensated in proportion to the injury their interest will receive. But, the condemning agency cannot be made to pay more than would be necessary if one person had a complete and perfect title to the property. This is referred to as the unit rule, meaning that the property must be evaluated as a whole. For example, a given compensation may be divided between leases, life tenants, and remaindersmen or between joint owners. However, the court in a condemnation suit may require only one check from the condemning agency. The division of the payment is a manner to be settled between the parties with fractional interests.
Right-of-Way Agreements

The taking agency may only desire the right to use property, commonly known as a right-of-way or a right-of-way easement. This is contrasted with the situation where the agency desires all of the rights to the property (fee simple). Right-of-ways are commonly needed for power transmission and gas lines. Regardless of whether a right-of-way or the fee simple is being taken, the condemnation procedure outlined above applies. However, right-of-ways present unique problems because of the continuing relationship between condemning agency and property owner. Both have property interests in the right-of-way. This continuing relationship can be the source of many problems. However, many of these problems can be avoided by an appropriate right-of-way agreement.

The following is a list of items a property owner should consider for inclusion into an agreement when involved in a right-of-way sale. It is not intended to be a complete list. Legal counsel should be consulted before signing a right-of-way agreement.

1) The grantor (property owner of the right-of-way and the grantee (taking agency) should be identified by name.
2) The tract of land should be identified by number for easy identification in correspondence.
3) The dollar payment, or other consideration paid, should be stated.
4) The right-of-way should be precisely described on a particular tract of land. A legal description must describe the right-of-way as to width, points to entry and exit of the centerline, and the approximate direction and distance. The right-of-way should be shown on a plat, attached to, and made a part of the agreement.
5) Use of the right-of-way should be set out in particular, and intent to later place additional pipelines, transmission wires, or roadways on the right-of-way should be spelled out in the agreement. Compensation for extra use of the right-of-way should be negotiated.
6) Generally, the agreement should provide that the original contour of the land (when for the terrain) must be restored by the grantee company and that suitable ground cover be established. This should include all track damage caused at any time by heavy equipment.
7) Provisions for the use of the rest of the land by the property owners should be included, such as the providing of crossovers for ditching, and the placing of equipment and materials in areas suitable to the landowner.
8) The agreement should provide that any damage to fencing, ditching, buildings, crops, trees, or shrubs should be either repaired or compensated for at market value or replacement cost. These items should be part of the compensation at the initial taking and construction as well as for later incidents.
9) The agreement should specify that the landowner has the right to use the right-of-way in any manner not inconsistent with the rights given to the grantee.
10) The agreement should provide that both parties may assign their rights under the agreement and that all obligations be binding on heirs, administrators, executors, successors and assigns of both parties.
11) An arbitration clause should be included in the agreement, which fully spells out the arbitration provisions, for the settlements of disputes without the costs involved in a court proceeding. The following is a possible arbitration procedure which might be useful to the parties. There would be a requirement for written notice of proposed arbitration by either party to the other. There should be 15 days maximum time for appointment by each party of a person to represent such parties. It may be best that such persons are residents of the county where the right-of-way is located. There should be a maximum of 15 days time for such two persons to appoint a third person, not necessarily a resident of the county, to complete the arbitration panel. Such panel shall consider the dispute and within 30 days after appointment of the third person render a decision in writing by a majority vote. Copies of the decision shall be furnished to grantor and grantee within 10 days. Both grantor and grantee shall agree to be bound by such arbitration. The agreement should provide that the grantee will pay the costs of such arbitration, including any fees and travel expenses. The point is that the parties should spell out in the documents the arbitration provisions which will apply.
12) The agreement should state that it contains all agreements between the parties, that no oral agreement will be binding, and that the grantee or his agents have made this provision clear to the landowner.
13) The agreement should be properly signed by the parties, including the grantee representative or agent, with his title or authority clearly noted.
14) The term of the agreement should be stated along with the duration of the taking involved.
Tax Aspects of Condemnation and Involuntary Conversion

Federal Income Tax Law

When property is condemned the owner generally realizes either a taxable gain or loss, i.e., compensation is either more or less than "adjusted basis" (what was paid for the property plus improvements and minus depreciation). In the usual case there will be a gain. Generally, gains from a sale are subject to income taxation in the year when realized. However, the federal income tax law provides the taxpayer an election not to have his gain from an involuntary conversion (property taking under eminent domain) 'taxed in the year realized. The taxpayer may elect to postpone the day of reckoning with the tax authorities. Postponement of recognition of all gain can be accomplished only if the taxpayer uses the entire proceeds of sale to invest in property similar or related in service or use to the property condemned or sold under threat of condemnation.

The reinvestment must be made within 2 years following the taxable year in which any part of the gain from the taking or sale under the threat of condemnation is realized unless the IRS grants an extension. Thus, if there is gain realized in January, the calendar year taxpayer has nearly 3 years (35 months) to find the appropriate replacement property. But if the "replacement period" should begin in December the same taxpayer would have just the following 2 calendar years to select suitable reinvestment property.

For example, X purchased 100 acres of farmland in 1950 for $30,000. In 1970, the State initiated condemnation proceedings against X, at which time he agreed to sell the property for $70,000. Thus, his gain was $40,000 ($70,000-$30,000). Normally, X would include this $40,000 long-term capital gain in his 1970 tax return. However, X decided to purchase another "like-kind" acreage for $80,000 in 1971. He used his entire proceeds, $70,000, to reinvest in similar property within the 2-year period. Thus, X pays no taxes on this gain in 1970. The basis on the new acreage is $40,000 ($80,000-$40,000 gain realized but not recognized). In this manner the taxes are deferred on the $40,000 capital gain realized in 1970. If later the new property is sold for $120,000, a gain of $80,000 is realized. Postponement is generally advantageous for taxpayers, especially those currently in high tax brackets who anticipate a lower tax bracket in the future or where a market sale is not planned such as in an estate plan for giving the property to the children.

Frequently, less than the entire tract of property belonging to a taxpayer is condemned. In a partial taking, the value of the remaining property may be decreased as a consequence of the absence of the part taken. In such a case "severance" damages may arise. Money received for severance damages is not subject to taxation if certain documentation of severance damages is available. Instead of taxing these damages, they are applied to reduce the basis of the remaining property. Such treatment is available only if the taxpayer can provide itemized documentation, provided by the taking agency at the time of the settlement, which proves that a specific amount of the compensation awarded was for severance damages. If the case cannot be settled without a condemnation suit and a jury is asked to establish damages, the jury can be asked to determine the amount of severance damages. A jury determination should satisfy the documentation requirement for the IRS.

The importance of handling severance damages as a reduction in the basis of the remaining property may depend upon the property owner's overall investment and estate planning. Services of tax counsel are important for a careful analysis at the beginning of negotiations over a taking of property under the threat of condemnation.

Indiana Income Tax

In Indiana, the adjusted gross income applies for income from sales related to involuntary conversions. The Federal law is applicable in interpreting the Indiana statute for the application of the adjusted gross income tax.

Indiana also has a gross income tax. The gross income tax currently applies to regular corporations and not individual trusts or estates. The corporation in effect pays the higher of the gross or the adjusted gross tax. Unlike the federal income tax and the Indiana adjusted gross tax, the Indiana gross income tax provides for an exemption rather than a postponement of gains from proceeds obtained from an involuntary conversion which are reinvested in similar property.

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*Those involved in a taking under the threat of the power of eminent domain should obtain qualified tax counsel early in the proceedings. IRS publication No. 549 "Condemnation of Private Property for Public Use" provides income tax information.*
Property Taken Under Federally Financed Programs

In January 1971 the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646) was enacted and became fully applicable on July 1, 1972. The purpose of this Act is “to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable hand acquisitions policies for Federal and federally assisted programs.”

Right-of-ways for power transmission and gas lines are examples of takings where the taking agency is likely to be a private company without federal funding. However, highways, parks, and many other projects for public benefit are likely to be partially or totally federally funded.

At least where Federal funds are involved, the procedures below will supplement the Indiana court procedures discussed above. In the case of real property acquisitions, the Federal Act spells out specific policies for dealing with property owners. The requirements for relocation assistance appear in large part to be compensation not previously available under Indiana law prior to 1971.

Real Property Acquisition

The agency acquiring real property is required to the greatest extent practicable to be guided by the following policies:

1) Make every reasonable effort to expeditiously acquire real property by negotiation.

2) Appraise the real property before the initiation of negotiations and give the owner or his designated representative the opportunity to accompany the appraiser during his inspection of the property.

3) Before initiating negotiations, establish an amount it believes to be just compensation and make a prompt offer of that amount. (It can’t be less than the agency’s approved appraisal of the fair market value of the property.)

4) Provide the owner of the property to be acquired with a written statement of the amount established as just compensation and a summary of the basis for establishing that amount.

5) Take possession of the property only after:
   a) the agreed purchase price has been paid, or
   b) a deposit with the court of the benefit of the owner of an amount not less than the agency’s approved appraisal of the fair market value of the property, or the amount of the award of compensation in the condemnation proceedings for the property.

6) Take possession only after at least 90 days written notice to the owner or occupant of the date possession is to be required by the agency.

7) Set any rent to a tenant or former owner for short term occupancy at a rate not to exceed fair rental value of the property to a short term occupier.

8) Take no coercive actions (such as advancing the time of condemnation, deferring the time of negotiations or condemnation or deferring the deposit of funds in court for the use of the owner) in order to compel an agreement on the price for the property.

9) Initiate formal condemnation proceedings, if necessary, and not intentionally make it necessary for owner to initiate legal proceedings to prove the fact of the taking of his real property.

10) Offer to acquire an entire property if the acquisition of only part of the property would leave the owner with an uneconomic remnant.

11) Reimburse the owner as soon as practicable after payment (see 5 above) for fair and reasonable fees incurred for:
   a) recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the government.
   b) penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering such real property.
   c) the pro rata portion of real property taxes paid for any period after the government took title or possession, whichever is the earlier.

12) Reimburse the owner for his reasonable costs, disbursements and expenses, including reasonable attorney, appraisal, and engineering fees actually incurred in a condemnation proceedings if:
   a) the final judgment is that the government cannot acquire the real property by condemnation, or
   b) the proceeding is abandoned by the government.

*This section follows closely an earlier UMC Science and Technology Guide entitled “Your Rights When Your Real Property is Taken by Federally Financed Programs,” by Robert J. Bevins and Jerry W. Looney, Department of Agricultural Economics, University of Missouri-Columbia, February 1972. Thanks to Paul Fields, research consultant in law for researching this Federal statute.
Relocation Assistance

When persons are displaced as a result of federal and federally assisted programs, the agency acquiring real property is required to do the following:

1) Make a payment, upon proper application, to any displaced person for:
   a) actual reasonable expenses incurred in:
      (1) moving himself, his family, business, farm operation, or other personal property.
      (2) searching for a replacement business or farm.
   b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency.

2) Offer to any person displaced from a dwelling the option in lieu of that in (1) above:
   a) a moving allowance not to exceed $300, and
   b) a dislocation allowance of $200.

3) Offer to any person displaced from his place of business or his farm operation the option in lieu of that in (1) above a fixed payment equal to average annual net earnings but not less than $2500 nor more than $10,000—except that in the case of a business no payment is to be made if the business can be relocated without substantial loss of its existing patronage, or
   b) is part of a commercial enterprise having at least one other establishment not being taken which is engaged in the same or similar business.

4) Make a payment not to exceed $15,000 to any owner-occupant displaced after having owned and occupied a dwelling for not less than 180 days prior to the initiation of negotiations. This payment shall include:
   a) A supplement to purchase price, if necessary, sufficient to allow the purchase of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling reasonably accessible to public services and places of employment and available on the private market.
   b) The amount, if any, necessary to compensate the owner for any increased interest costs arising from the purchase of a replacement dwelling if the acquired dwelling was encumbered by a mortgage.
   c) Reasonable expenses for acquiring evidence of title, recording fees, and other closing costs incident to the purchase of a replacement dwelling.

5) Under some conditions insure any mortgage (including advances during construction) on a comparable replacement dwelling.

6) Make a payment to a tenant displaced from a dwelling occupied for not less than 90 days prior to the initiation of negotiations for acquisition of the dwelling. Such payment shall be either the amount, not to exceed $4,000 necessary to enable the displaced tenant to:
   a) lease or rent for a period not to exceed 4 years, a decent, safe and sanitary dwelling with comparable access to facilities and services and reasonable access to his place of employment, or
   b) make a downpayment on a decent, safe, and sanitary dwelling with comparable access to facilities and services, subject to the provision that if the amount exceeds $2,000 the tenant must equally match any such amount in excess of $2,000 in making the downpayment.

7) Provide relocation assistance advisory services including:
   a) Determination of need.
   b) Information on real estate for sale and rent
   c) Assurance that reasonable replacement dwellings are available. (This may be waived under some conditions.)
   d) Assistance in relocating displaced farm or business.
   e) Information on federal and state housing programs, disaster loan programs, and other programs of assistance offered to displaced persons.
   f) Other advisory services to displaced persons to minimize hardships to those adjusting to relocation.

Further, no payment for relocation assistance is considered as income for the purposes of Federal income tax; or for the purposes of determining the eligibility or the extent of eligibility for Social Security or for any other Federal law.

*Indiana’s Relocation Assistance Act of 1971 (I.C. 1971, 8-13-18.5-1 et seq.) provides for benefits roughly parallel to the Federal Act where there is an acquisition of real estate for public improvement by agencies of the State of Indiana or political subdivisions with the power of eminent domain. All payments under the Indiana Act are exempt from Indiana’s Gross and Adjusted Gross Income Tax.